

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---------------------|
| KATHERINE ELIZABETH NEIMER | : | |
| a minor, by and through JAMES J. NEIMER | : | |
| and REBECCA NEIMER, her parents and | : | |
| natural guardians, | : | |
| Plaintiffs | : | |
| v. | : | CI-02-CV-4034 |
| | : | |
| CITY OF LANCASTER; LANCASTER | : | JURY TRIAL DEMANDED |
| RECREATION COMMISSION; and | : | |
| ISMAEL ALVAREZ, | : | Judge Newcomer |
| Defendants | : | |

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| a minor, by and through JAMES J. NEIMER | : | |
| and REBECCA NEIMER, her parents and | : | |
| natural guardians, | : | |
| Plaintiffs | : | |
| v. | : | |
| | : | CI-03-CV-5922 |
| THE DISTRICT OF LANCASTER SCHOOL | : | JURY TRIAL DEMANDED |
| BOARD, et al. | : | |
| Defendants | : | Judge Newcomer |

MOTION TO CONSOLIDATE OF DEFENDANTS
CITY OF LANCASTER AND LANCASTER RECREATION COMMISSION

1. The action filed at 03-4034 was instituted on June 24, 2002 and sought recovery for alleged violations of civil rights of the minor plaintiff, Katherine Elizabeth Neimer. A copy of the complaint is attached hereto as Exhibit "A."

2. On or about October 24, 2003, the same plaintiffs filed another action, bearing Docket No. 03-5922. A copy of that complaint is attached hereto as Exhibit "B."

3. The complaint filed at 03-5922 seeks recovery for the same alleged violations of civil rights of Katherine Elizabeth Neimer for which recovery was sought in the earlier action, arising

from the same operative facts, namely, the fondling of Katherine Elizabeth Neimer by her teacher, Ismael Alvarez, on December 21 and 22, 2000.

4. The complaint filed at Docket No. 03-5922 avers, *inter alia*, that the District of Lancaster School Board and its individual members knew or had reason to know that prior to the incidents of December 21, and 22, 2000, Mr. Alvarez engaged in classroom practices that involved improper physical touching of his students and that the School Board and its individual members, generally, failed to adopt appropriate policies, failed to properly train its teachers and failed to properly supervise its teachers. *See, e.g.*, Counts I, paragraphs 100-104 and Count II, paragraphs 105-110.

5. The factual predicates of the suit filed on October 24, 2003, and the earlier suit filed on June 24, 2002 are identical: the fondling of Katherine Elizabeth Neimer by Ismael Alvarez, the circumstances that preceded and followed those incidents, and damages. Accordingly, the two suits involve numerous common questions of fact.

6. In addition, the two suits involve common questions of law, in particular, whether the evidence is sufficient to establish that the School Board and/or its individual members, or the City of Lancaster and/or the Lancaster Recreation Commission, adopted or otherwise had policies that denied Katherine Elizabeth Neimer of her constitutional rights or whether the facts support claims of inadequate training or supervision.

7. Federal Rule of Civil Procedure 42(a) provides that actions may be consolidated where actions are pending that involve common questions of law or fact. Rule 42(a) also provides that the Court may make such orders concerning proceedings as may tend to avoid unnecessary costs or delay.

8. It respectfully is submitted that these two actions should be consolidated to allow all

related factual issues to be determined in a single action against all concerned defendants, to avoid inconsistent verdicts and also to avoid the possibility that there may be two trials on precisely the same subject matter.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION TO CONSOLIDATE
OF DEFENDANTS CITY OF LANCASTER AND
LANCASTER RECREATION COMMISSION

The operative facts supporting the within Motion to Consolidate are set forth in the Motion and for the sake of brevity, will not be repeated herein. Essentially, the two actions seek recovery of identical damages arising out of the identical factual circumstances. Moreover, the legal standards of liability applicable to the various defendants essentially are the same: whether there was a policy that caused the deprivation of constitutional rights, and whether there was inadequate training or supervision of employees that amounted to deliberate indifference to the deprivation of constitutional rights.

It respectfully is submitted that the interests of justice would be served by having the facts determined in a single proceeding to avoid the possibility of inconsistent results, to have a single jury apply the law in a consistent manner, and to avoid the possibility of there being two trials on precisely the same issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am this day serving the foregoing Motion to Consolidate of defendants, the City of Lancaster and the Lancaster Recreation Commission on the persons and in the manner indicated below.

Service by Personal Service addressed as follows:

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Dated: October 28, 2003

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